



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-1531**

**Appeal P-9700306**

**Ministry of the Solicitor General and Correctional Services**



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## **NATURE OF THE APPEAL:**

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of witness “statements that were written on [the requester’s] behalf”. The Ministry identified the responsive records and granted access to a number of witness statements. The Ministry denied access to eight statements provided by seven witnesses pursuant to the exemptions under sections 21(1) and 49(b) (invasion of privacy). The requester appealed the Ministry’s decision to deny access.

The requester, now the appellant, filed a complaint with the Ontario Provincial Police (the OPP) that she had been sexually abused as a child by a relative. As a result of her complaint, the accused was charged with a number of criminal charges.

This office provided a Notice of Inquiry to the appellant, the Ministry and the seven individuals who authored the statements (the affected persons). Representations were received from the appellant, the Ministry and three of the affected persons.

Two of the affected persons (a Senior Counsellor and the appellant’s former spouse) responded by indicating that they had no objection to their statements being disclosed to the appellant. Accordingly, I will order the Ministry to disclose these statements to the appellant in the order provisions below. One affected person objected to the disclosure of her statement. The records that remain at issue consist of six statements from five affected persons.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records and I find that the information in the records constitutes the personal information of the appellant, the accused and the affected persons.

Section 47(1) of the Act allows individuals access to their own personal information held by a government institution and the appellant, therefore, has a general right of access to those records which contain her personal information.

Section 49 sets out exceptions to this general right. Where a record contains the personal information of both the appellant and other individuals, section 49(b) of the Act gives the Ministry the discretion to withhold information in the record if it determines that disclosing that information would constitute an unjustified invasion of another individual’s personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual’s personal privacy.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Where one of the presumptions found in section 21(3) applies to

the personal information found in a record, **the only way** such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information [John Doe v. Ontario (Information and Privacy Commissioner) (1993), O.R. (3d)767].

The Ministry submits that sections 21(3)(b) and 21(2)(f) apply to the information in the records. I will first consider the application of section 21(3)(b), which reads as follows:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The Ministry submits that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law, in this case, the Criminal Code. The Ministry submits that disclosure of the personal information in the records would constitute a presumed unjustified invasion of personal privacy.

The appellant states that she is a “survivor” of sexual abuse and that she has undergone therapy and counselling as part of the healing and recovery process. The appellant states that when the accused was first charged, the OPP had indicated to her that she could view the statements but only after the completion of the trial and that she could be present at the trial. The appellant states that she was not advised of the trial date, despite her requests to the OPP, and after the trial was over, she was told that she could not have access to the statements. She seeks access to the information in the records as part of this healing process and to bring closure to this painful part of her life.

I have carefully reviewed the representations of the parties. I find that the personal information in the records was compiled and is identifiable as part of the OPP’s investigation into a possible violation of the Criminal Code and the presumption in section 21(3)(b) accordingly applies. I am not able to consider the appellant’s arguments, as the only way that a presumption can be rebutted is under sections 21(4) or 23. None of the personal information contained in the records falls under section 21(4) and the appellant has not raised the possible application of section 23 of the Act.

Accordingly, I find that the Ministry has properly exercised its discretion to deny access to the records pursuant to section 49(b) of the Act. I find also that it is not feasible to sever the records as the personal information of the appellant is intertwined with that of other individuals.

## **ORDER:**

1. I order the Ministry to disclose the statements given by the Senior counsellor and the appellant’s former spouse to the appellant by **March 11, 1998**.

2. I uphold the decision of the Ministry to withhold access to the remaining records.
3. I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ February 18, 1998